

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

HONORABLE DAVID B. GASS

CLERK OF THE COURT  
E. Aguilar  
Deputy

STATE OF ARIZONA

LORI A EIDEMANIS  
JAY ROBERT RADEMACHER

v.

AIMEE ROSE STENSGAARD (001)

BETH ALEXANDER  
DANIEL B PATTERSON

COURT ADMIN-CRIMINAL-CCC  
PRETRIAL SERVICES AGENCY-CCC

MINUTE ENTRY

8:45 a.m. This is the time set for an Evidentiary Hearing Re: Any Pending Motions.

Courtroom CCB 903

State's Attorney:	Jay Rademacher and Lori Eidemanis
Defendant's Attorney:	Beth Alexander and Daniel Patterson
Defendant:	Present
Court Reporter:	Brenda Brown

**LET THE RECORD REFLECT** Jen Mayer of Sentinel Services Monitoring is present in the courtroom.

Jen Mayer addresses the Court and the court is informed Defendant is in non-compliance with her fees regarding electronic monitoring. The Court is further informed Defendant is delinquent \$2,143.00 in monitoring fees. The original agreement was that Defendant would pay \$390.00 per month for electronic monitoring services.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

**IT IS ORDERED** Defendant shall pay through the Clerk of the Court a minimum of \$1,000.00, **no later than February 28, 2014**, and the remaining delinquent balance of \$1,143.00 shall be paid in full, **no later than March 21, 2013**.

**IT IS FURTHER ORDERED** Sentinel Services Monitoring shall file a Status Report with this division as to the arrears owed. If there is a balance owed by Defendant for the delinquent fees, Sentinel Services Monitoring shall be expected to appear at the trial date of **March 24, 2014, at 8:00 a.m. before the Master Calendar Assignment Judge**.

The Court addresses **Defendant's Motion to Suppress Statements and Request for Voluntariness Hearing** filed with the Court on December 09, 2013.

The State presents the Court and Defense counsel with a CD audio of the interview with Detective Jones of the Avondale Police Department and the Defendant.

The Court will defer ruling on this motion until the CD audio has been reviewed.

The Court addresses the **State's Notice of 404 (B) Evidence Motion Re: Divorce Filings/Defendant's Involvement with Other Men/Defendant as Life Insurance Beneficiary of Victim's Policy**, filed with the Court on August 22, 2012, and the Defendant's Response to the State's Motion, filed October 10, 2012.

Oral argument is presented. Based thereon,

**IT IS ORDERED** granting the State's Notice of 404 (B) Motion allowing the divorce filing, the Defendant's involvement with other men and that Defendant is a beneficiary of victim's Life Insurance policy.

The Court addresses **Defendant's Supplemental Motion to Preclude Other Act Evidence Pursuant to Rule 404(B), filed with the Court on November 08, 2013, and the State's Reply to Defendant's Motion, filed December 10, 2013**.

Oral argument is presented. Based thereon,

**IT IS ORDERED** denying Defendant's Supplemental Motion to Preclude Other Act Evidence Pursuant to Rule 404(B).

The Court addresses **Defendant's Motion in Limine Re: Hearsay Statements About the Relationship Between The Defendant And The Deceased**, filed with the Court on October 12, 2012.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

Oral argument is presented. Based thereon,

To begin, certain evidentiary rulings arise globally and admission is contingent upon Defendant's ability to meet the required foundational elements:

1. With regard to the victim's alleged prior violent acts, that the defendant was either present and observed the event at issue or was aware of the facts and circumstances of the event at issue prior to the shooting in this case.
2. With regard to bruises that defense witnesses identified, that the victim was the alleged cause of those bruises. Before evidence of the bruises are admitted, Defendant will need to establish the cause of the bruises either through her own testimony or testimony of another witness who observed the victim cause the bruises or can lay the foundation without hearsay statements from the defendant unless the defendant establishes an exception to the hearsay rule.

**IT IS ORDERED** that the following will be admitted with the above limitations in mind. The rulings listed below track the format of Defendant's "Response To State's November 8 Memorandum Re: Character Evidence Of The Victim." It is the same format used to address the matters during the hearing.

**A. TESTIMONY OF JAMES MASQUELIER**

- a. The victim's tendency to become aggressive when he drank will be allowed under 404(a) as a pertinent character trait.
- b. James may testify about the 2010 birthday party as follows:
  - i. The victim started yelling at two teenage boys will be allowed.
  - ii. Note: The victim physically touching James' wife at the same 2010 party will **not** be allowed.
- c. James may testify about the victim's reputation in the community for being a "mean drunk" under 404(a) as a pertinent character trait.
- d. James may testify about his observations of the physical altercation at the 2005 Christmas party.
- e. James may testify about his observance of bruising if Defendant lays proper foundation but defendant's statements as to the cause of bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked the defendant but absent a hearsay exception, Defendant's answer is inadmissible.
- f. James may testify about observing the victim grabbing Defendant by the arms and that James observed bruising.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

- g. James may testify that he would encourage Defendant to leave. However, absent an exception to the hearsay rule, James may not testify that Defendant told James that she was scared of the victim and thought he was going to kill her and that defendant would not leave because she wanted to help her dog.

**B. TESTIMONY OF ERICA LEE**

- a. Erica may testify that the victim was unpredictable, would get easily upset without provocation, and was aggressive under 404(a) as pertinent character traits.
- b. Erica may testify about what she observed of the incident at the 2007 engagement party.
- c. Erica may testify about her observance of bruising if Defendant lays proper foundation but defendant's statements as to the cause of bruising or Erica's conclusions as to the cause of the bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked Defendant but absent a hearsay exception, Defendant's answer is inadmissible. Defendant's statements to Erica that the victim beat her and her concerns that the victim would harm the dogs are precluded absent a hearsay exception.
- d. Defendant's statements that she was "fearful" of the victim are precluded absent a hearsay exception.
- e. Defendant's statements that she was held in a closet and the victim would call her derogatory names are precluded absent a hearsay exception.
- f. The victim's alleged statement to Erica's ex-husband is precluded absent a hearsay exception.

**C. TESTIMONY OF BOBBI MASQUELIER**

- a. Bobbi may testify as to her observations of the physical altercation at the 2005 Christmas party.
- b. Bobbi may testify as to her observations of the events at the family pool party in approximately 2010.
- c. Bobbi may testify that the victim's personality changed when he was drunk and that he would frequently drink to the point of intoxication under 404(a) as pertinent character traits.
- d. Bobbi may testify that she heard the victim call Defendant derogatory names so long as the occasion is not too remote. The evidence is not hearsay and Defendant is not attempting to prove the truth of the derogatory terms. Instead, it is admissible as an observation as an act of violence pursuant to A.R.S. § 13-415 because the threat alone can constitute an act of domestic violence and has independent legal significance.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

- e. Bobbi may testify as to her observance of bruising if Defendant lays proper foundation but defendant's statements as to the cause of bruising or Bobbi's conclusions as to the cause of the bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked Defendant but absent a hearsay exception, Defendant's answer is inadmissible. Defendant's statements to Bobbi that the victim had choked her are precluded absent a hearsay exception.
- f. Bobbi may testify that Defendant went to her parent's home on numerous occasions will be allowed. Conclusions as to Defendant's reason for going to parent's home are precluded absent a hearsay exception.
- g. Bobbi may testify that she heard the victim threaten to kill Defendant's dogs as an observation as an act of violence pursuant to A.R.S. § 13-415 because the threat alone can constitute an act of domestic violence and has independent legal significance.
- h. Bobbi may testify as to the victim's habit of always carrying a gun based on actual observation.
- i. Bobbi may testify about the victim visiting or not visiting Defendant in hospital based on her actual observation.
- j. The victim's alleged attempts to prevent Defendant from talking on phone with Bobbi is precluded are precluded absent a hearsay exception. **On reconsideration, Bobbi also may not testify about overhearing the victim say, "You better not be talking to your fucking mother" or the victim ordering Defendant to hang up the phone absent a hearsay exception.**
- k. Bobbi may testify that Defendant laid down the phone and that Bobbie heard altercations between the victim and Defendant. During these altercations, the victim threatened to hurt and/or kill the defendant is admissible based on A.R.S. § 13-415 because the threat alone can constitute an act of domestic violence and has independent legal significance. Bobbi must establish that she could recognize the victim's voice.
- l. Bobbi may testify that Bobbi called the police and asked them to return to the home to check on Defendant. Bobbi's testimony that Defendant called the police and police removed the victim from their shared home are precluded absent a hearsay exception. The same is true with regard to whether the victim returned home against police orders and whether the defendant told police that the victim was not home because he threatened to kill her if she told the truth; they are precluded absent a hearsay exception.
- m. The victim forced Defendant to engage in sex act against her will are precluded absent a hearsay exception.
- n. Bobbi may testify that she heard voicemails left by the victim where he threatened to kill Defendant based on A.R.S. § 13-415 because the threat alone can constitute

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

an act of domestic violence and has independent legal significance. Bobbi must establish that she could recognize the victim's voice.

- o. Bobbi may testify that she herself was frightened of the victim.
- p. Bobbi may testify as to the victim's reputation for drinking too much alcohol and for being violent under 404(a) as pertinent character traits.
- q. Bobbi may testify that she overheard a phone call in which the victim threatened to kill his ex-wife (not Defendant) is admissible based on A.R.S. § 13-415 because the threat alone can constitute an act of domestic violence and has independent legal significance. Bobbi must establish that she could recognize the victim's voice and the foundation as noted above.

**D. TESTIMONY OF DUSTIN WEED**

- a. Dustin may testify that the victim had an explosive temper, would "go off the deep end," used abusive language, overreact to small things, and had a reputation for being a screamer/yeller under 404(a) as pertinent character traits.
- b. The incident in which the victim pulled out his gun and pressed it against Dustin's ribcage is inadmissible because it was not observed and was not known by Defendant because the witness, Dustin, acknowledged never telling anyone about the incident until after the victim was killed and the witness and the victim were alone at the time so there were no other witnesses who could have shared the incident with Defendant.

**E. TESTIMONY OF JESSICA CRABLE**

- a. Jessica may testify about her observance of bruising if Defendant lays proper foundation but Defendant's statements as to the cause of bruising or Jessica's conclusions as to the cause of the bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked Defendant but absent a hearsay exception, Defendant's answer is inadmissible. Jessica may testify that she accompanied Defendant to the home to help her pack her belongings. Defendant's statements to Jessica about the reason for taking her clothes, showing Jessica the closet, etc. are precluded as hearsay unless an exception applies.
- b. Jessica may testify about the voicemail that Defendant played for her in which the victim makes a threat, but only if Jessica knows the victim's voice based on A.R.S. § 13-415 because the threat alone can constitute an act of domestic violence and has independent legal significance.

**F. TESTIMONY OF KIM HUNTER**

- a. Kim may testify about the incident when the victim was intoxicated and asked Defendant to show her breasts in exchange for free drinks at a bar based on

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

- A.R.S. § 13-415 because it can constitute an act of domestic violence and has independent legal significance.
- b. The witness cannot testify as to whether the victim did not want Defendant to use the phone as hearsay. Kim may testify that she overheard the victim call Defendant derogatory names and threatened to “kick her ass” are admissible but only if Kim knows the victim’s voice based on A.R.S. § 13-415 because the derogatory curse words and threats alone can constitute an act of domestic violence and has independent legal significance.
  - c. Kim’s may testify about her observance of bruising, specifically the bruise on the defendant’s neck in the formation of a handprint, if Defendant lays proper foundation but Defendant’s statements as to the cause of bruising or Kim’s conclusions as to the cause of the bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked Defendant but absent a hearsay exception, Defendant’s answer is inadmissible.
  - d. Defendant’s statements that she was afraid to leave the victim and that it was not always that bad are precluded as hearsay unless an exception applies.
  - e. Defendant’s statements to Kim that she was afraid that the victim would kill her on two occasions are precluded as hearsay unless an exception applies.
  - f. Defendant’s statements to Kim that the victim would beat Defendant if she declined sex are precluded as hearsay unless an exception applies.
  - g. Defendant’s statements to Kim that the victim did not want Defendant going out is precluded are precluded as hearsay unless an exception applies.
  - h. Kim may testify that Defendant would stay at Kim’s home and that Kim was frightened that the victim would find Defendant and harm Defendant and Kim herself. Defendant’s statements to Kim are not admissible unless an exception applies.
  - i. Kim may testify about the incident at a Circle K approximately one month before the victim’s death based on A.R.S. § 13-415 because the victim’s actions and words alone can constitute an act of domestic violence and has independent legal significance.
  - j. Kim may testify about the victim’s reputation for violence under 404(a) as pertinent character trait.

G. TESTIMONY OF HEATHER LARSEN

- a. Heather’s testimony that the victim called Defendant a “bitch and whore” when Defendant burned hotdogs at a summer barbeque in 2010 is admissible based on A.R.S. § 13-415 because the victim’s actions and words alone can constitute an act of domestic violence and has independent legal significance.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

- b. Heather may testify as to her observance of bruising if Defendant lays proper foundation but Defendant's statements as to the cause of bruising or Heather's conclusions as to the cause of the bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked Defendant but absent a hearsay exception, Defendant's answer is inadmissible.
- c. Heather may testify as to her observations when Heather helped Defendant move out of the marital home, but none of Defendant's statements are admissible unless an exception applies.
- d. Heather may testify to her observations during the Zac Brown concert on September 26, 2010, but Defendant's statements regarding Defendant's reason for refusing to leave with Heather are precluded as hearsay unless an exception applies. Heather can testify that she called Avondale police, that the victim physically blocked Defendant until she told Defendant that she had called the police, and that Heather observed a lump on Defendant's head, some scratches, and some red marks around Defendant's chest and neck that looked like fingerprints.
- e. All Heather's testimony about what Defendant said about sex acts are precluded as hearsay unless an exception applies.
- f. Defendant's statements to the witness that the victim isolated Defendant, did not want Defendant to use the phone, did not want Defendant going out with friends, and did not want Defendant to have other social interaction are precluded as hearsay.

H. TESTIMONY OF MIGUEL DENG

- a. Miguel may testify about his observance of bruising is admissible if Defendant lays proper foundation but Defendant's statements as to the cause of bruising or Miguel's conclusions as to the cause of the bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked Defendant but absent a hearsay exception, Defendant's answer is inadmissible.
- b. Miguel may testify about his observations involving the victim during a company sponsored happy hour for Defendant's employer. However, absent a hearsay exception, Miguel may not testify about statements made by the defendant's co-workers.

I. TESTIMONY OF JOSE URBALLEJO

- a. Jose may testify as to his observations of what occurred when Defendant went to Jose's home on three occasions. Defendant's statements to Jose about the victim and Defendant fighting are precluded as hearsay unless an exception applies. Jose



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

may testify about his observations of Defendant crying and any perception he had that Defendant was frightened. Defendant's statements to Jose that the victim stated he would kill Defendant are precluded as hearsay unless an exception applies.

J. TESTIMONY OF SERGEANT JOHNSON

- a. Sergeant Johnson may testify as to his observations at the December 10, 2005 company Christmas party. His beliefs that the victim was angry about Defendant dancing with a male co-worker are precluded as hearsay unless an exception applies.

K. TESTIMONY OF KATHY O'HAGAN

- a. Kathy may testify as to her observations at the December 10, 2005 company Christmas party.
- b. Kathy may testify that she heard David tell Defendant that "he had a gun and wasn't afraid to use it" based on A.R.S. § 13-415 because the victim's actions and words alone can constitute an act of domestic violence and has independent legal significance.
- c. Kathy may testify about her observance of bruising is admissible if Defendant lays proper foundation but Defendant's statements as to the cause of bruising or Kathy's conclusions as to the cause of the bruising are precluded as hearsay unless an exception applies. By way of clarification, the Court is not precluding testimony about what the witness asked Defendant but absent a hearsay exception, Defendant's answer is inadmissible.

L. TESTIMONY OF DAVID KLAPHAKE

- a. David may testify about his observations that while at a bar in the "North Country," the victim consumed multiple vodka drink, became angry when he lost a pool game, and "got in their face," referring to people against whom he was playing pool. David may testify that he intervened and prevented a physical fight, and that the victim later bragged about the fight to Defendant based on A.R.S. § 13-415 because the victim's actions and words alone can constitute an act of domestic violence and has independent legal significance and also to establish Defendant's knowledge of the incident. Any reference to "Native Americans" and racist comments made by the victim are precluded under Rule 403.
- b. David may testify about his observations made the night before and during the victim's and Defendant's wedding in 2012.
- c. David may not testify as to the victim's state of mind because it is speculative.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

- d. David may testify about his observations of victim's behavioral changed when he was intoxicated and the victim's reputation for violence under 404(a) as pertinent character traits.

M. TESTIMONY OF DAN MASQUELIER

- a. Dan may testify that he observed the victim consume alcohol and start a "violent fight" with the victim's friend, but as noted above only if Defendant lays foundation that she was aware of the incident.
- b. Dan may testify that Defendant went to Dan's house. Defendant's statements that she needed somewhere to go, that the victim was going to kill her, and that the victim had grabbed her by the arms and choked her neck while threatening her life are precluded as hearsay unless an exception applies.
- c. Dan may testify that the victim had a reputation for violence under 404(a) as pertinent character traits.

N. TESTIMONY OF MITCH YARITZ

- a. Mitch may testify about his observations while accompanying the victim's daughter to visit the victim and Defendant.

O. TESTIMONY OF OFFICER BAILEY

- a. Officer Bailey may testify about his observations at the December 10, 2005 Christmas party.

P. POLICE REPORTS SUBMITTED TO COURT:

- As requested, the Court has reviewed the police reports, interview transcripts, and the grand jury transcript submitted by the defendant. The Court holds these documents to be inadmissible hearsay, however, witnesses may testify to their observations.

1.) Avondale Police Report: 1055131 – September 26, 2010

- a. Testimony is limited to the observations made by Heather Larson, Andres Labrado, and Officer Blodgett.

2.) Avondale Police Report: 1040274 & 1040287 – July 18, 2010

- a. As to report 1040274: Defendant may testify to her observations during the event.
- b. As to report 1040287: Bobbi Masquelier may testify to the actions she took and the events she actually observed.

3.) Avondale Police Report: 1029186 – May 28, 2010

- a. Defendant may testify to her observations during the event.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

- 4.) St. Croix County, WI Criminal Complaint and Report by Deputy K. Stewart – January 21, 2006
  - a. Defendant may testify to her observations during the event
- 5) Transcript: Interview of Daniel Masquelier – March 1, 2013
  - b. This evidence is precluded hearsay. Dan may testify as noted above.
- 5.) Transcript: Interview of David Klaphke – August 22, 2012
  - a. This evidence is precluded hearsay. David may testify as noted above.
- 6.) Grand Jury Transcript
  - a. This evidence is precluded hearsay.
- 7.) St. Paul Police Department Incident Report and Complaint: 05263018 – December 10, 2005
  - a. Defendant may testify to her observations during the event.

Rulings of admissibility as outlined in Defendant's "RESPONSE TO STATE'S NOVEMBER 8 MEMORANDUM RE: BEHAVIOR AT THE SHOUTHOUSE."

- 1.) **Defendant's argument in the parking lot outside the bar, to get Defendant's car keys:** This evidence is admissible pursuant to Rule 404(b) as it is being used not to show action in conformity therewith but for other purposes, such as proving motive because the victim gave keys to Ms. Elbert, a female coworker, and Defendant accused the victim of being sexually involved with Ms. Elbert.
- 2.) **Defendant attempted to bite and/or scratch Ms. Elbert:** This evidence is admissible pursuant to Rule 404(b).
- 3.) **Defendant used foul language and yelled at the victim:** This evidence is admissible pursuant to Rule 404(b).
- 4.) **Defendant referred to the victim as "my David":** This evidence is admissible pursuant to Rule 404(b).
- 5.) **Defendant's comments about Ms. Hampton's breasts:** *On reconsideration, this evidence is admissible pursuant to Rule 404(b). This evidence further is not precluded pursuant to Rule 401, 402, and 403.*
- 6.) **Defendant's intoxication on the night of the shooting:** This evidence is admissible pursuant to Rule 404(b). Witnesses may testify to the amount of alcohol they observed Defendant consume as well as their perception of Defendant's intoxication.

10:10 a.m. Court stands at recess.

Respective counsel and Defendant are present.

Court Reporter, Brenda Brown is present.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2011-132669-001 DT

02/21/2014

The Court addresses the State's November 8, Memorandum Re: Defendant's Behavior at the Shout House before the Shooting, filed with the Court on November 08, 2013, and the State's Notice of Rule 404(B) Evidence Re: Defendant's Behavior at Shout House Hours before the Shooting, Defendant's Response, filed November 22, 2012, and the Defendant's Response, filed December 09, 2013.

Based thereon,

**IT IS ORDERED** granting the State's Motion Memorandum Re: Defendant's Behavior at the Shout House before the Shooting.

**IT IS FURTHER ORDERED** continuing Evidentiary Hearing Re: Defendant's Motion to Suppress, set this date to **February 26, 2014 at 10:30 a.m. in this division**. (Defendant's presence is waived for purposes of this hearing only).

**IT IS FURTHER ORDERED** affirming the Settlement Conference set for **February 28, 2014 at 1:30 p.m. before the Honorable Judge Welty**.

**IT IS FURTHER ORDERED** affirming the trial set for **March 24, 2014 at 8:00 a.m. before the Master Calendar Assignment Judge** in Courtroom 5B in the South Court Tower. All subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

**LAST DAY REMAINS: 4/18/2014.**

**IT IS FURTHER ORDERED** affirming prior release conditions.

12:07 p.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.